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March 20, 2023

Senator Judy Lee, Chairman
Senate Human Services Committee
North Dakota State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

RE: AHIP Concerns on HB 1413 *Relating to out-of-pocket expenses for health care services*

Dear Chairman Lee and Committee members,

On behalf of AHIP, we offer the following concerns regarding HB 1413, which encourages drug manufacturers to employ practices that are explicitly forbidden in federal health programs, like Medicare and Medicaid, because they have been deemed as illegal kickbacks.¹ We appreciate the opportunity to provide feedback on this legislation and your consideration of our concerns discussed below.

Drug Manufacturers Intentionally Use Copay Coupons and Patient Assistance Programs to Keep Drug Prices High, Raising Costs for Everyone.

Everyone should be able to get the medications they need at a cost they can afford. However, drug prices continue to rise out of control, and pharmacy costs now represent over 22 cents² out of every dollar of premium spent on health care.

Drug manufacturers acknowledge their drugs are unaffordable for patients. But rather than simply lowering their prices, they offer copay coupons, vouchers, discounts, or payments to offset cost-sharing expenses (collectively, “copay coupons”) to hide their exorbitant prices. Copay coupons are yet another way for drug companies to insulate themselves from public scrutiny, skirt transparency, and maximize their profits by protecting their out-of-control pricing practices.

These tactics incent patients to use very expensive drugs rather than equally effective, less expensive alternatives (such as generics, biosimilars, and other therapeutic substitutes). Drug manufacturers strategically offer these promotions for a narrow selection of drugs and often only for a limited period, after which the full price of the drug is passed on to the patient’s insurance, raising costs for everyone.

¹ See 42 U.S.C § 1320a-7b; *Special Advisory Bulletin: Pharmaceutical Manufacturer Copayment Coupons*. Department of Health and Human Services, Office of the Inspector General. September 2014. Available at https://oig.hhs.gov/fraud/docs/alertsandbulletins/2014/SAB_Copayment_Coupons.pdf.

² *Where Does Your Health Care Dollar Go? America’s Health Insurance Plans*. September 6, 2022.
<https://www.ahip.org/resources/where-does-your-health-care-dollar-go>

As stated by the editor of Kaiser Health News, Dr. Rosenthal writes “coupons create a mirage that perpetuates our system’s reckless spending. They cover up a drug’s true price, much of which our insurers pay... and contributes to our escalating insurance premiums and deductibles year after year.”³

The federal government considers copay coupons to be an illegal kickback if used by an enrollee in federal health programs, including Medicare and Medicaid, because they induce a patient to use a specific drug.⁴ Because the commercial market is the only market where drug manufacturers may offer copay coupons, they are aggressively seeking policy proposals, like HB 1413, to protect their financial gains.

Data Proves That Drug Coupons Are Used by Drug Manufacturers to Increase Sales.

There are multiple studies by Harvard⁵, Congress, the nonpartisan Congressional Research Service⁶, and others, that found that drug manufacturers use patient assistance programs as a sales tool – focusing on their rates of return, encouraging patients to stay on branded drugs after a generic is introduced, and subsidizing third-party foundations to drive sales and attract patients who otherwise might not have used the high-priced drug. For example:

- A recent study found that for just one category of drugs used to treat multiple sclerosis, the study estimates that coupons raise negotiated prices by 8% and result in just under \$1 billion in increased U.S. spending annually.⁷
- The U.S. House Oversight Committee’s two-year investigation into drug pricing found that for one cancer treatment, one manufacturer projected a potential rate of return of \$8.90 for every \$1 spent on their copay assistance program.⁸
- A case study done conducted by economists at Harvard, Northwestern, and UCLA, on the effect of copay coupons in Massachusetts (who had banned coupons) and their neighboring state New Hampshire (which allowed coupons) found:
 - Prices for brand name drugs with copay coupons rose 12% per year compared to price increases of 7% to 8% per year on brand name drugs that did not offer coupons;
 - A 60% (or more) increase in brand utilization than if patients had switched to a generic competitor; and
 - After reviewing a sample of 23 medications, coupons increased total spending by \$700 million in the five years after generic entry.⁹

³Is My Drug Copay Coupon a Form of Charity – Or a Bribe? Kaiser Health News, April 21, 2022 <https://khn.org/news/article/drug-companies-copay-assistance-program-charity-or-bribe/>

⁴See 42 U.S.C § 1320a-7b; Special Advisory Bulletin: Pharmaceutical Manufacturer Copayment Coupons.

⁵Dafny, et. al. When Discounts Raise Costs: The Effect of Copay Coupons on Generic Utilization. American Economic Journal: Economic Policy 9, no. 2 (May 2017): 91–123. https://www.hbs.edu/ris/Publication%20Files/DafnyOdySchmitt_CopayCoupons_32601e45-849b-4280-9992-2c3e03bc8cc4.pdf

⁶Prescription Drug Discount Coupons and Patient Assistance Programs (PAPs). Congressional Research Service. June 15, 2017. <https://crsreports.congress.gov/product/pdf/R/R44264/5>.

⁷Dafny, et.al. How do copayment coupons affect branded drug prices and quantities purchased? National Bureau of Economic Research. February 2022. https://www.nber.org/system/files/working_papers/w29735/w29735.pdf.

⁸Drug Pricing Investigation: Majority Staff Report. US House Committee on Oversight and Reform. December 2021.

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WITH%20APPENDIX%20v3.pdf>

⁹Dafny, et. al. *When Discounts Raise Costs: The Effect of Copay Coupons on Generic Utilization*. American Economic Journal: Economic Policy 9, no. 2 (May 2017): 91–123. Available at https://www.hbs.edu/ris/Publication%20Files/DafnyOdySchmitt_CopayCoupons_32601e45-849b-4280-9992c3e03bc8cc4.pdf

Health Insurance Providers Have Limited Tools to Hold Drug Manufacturers Accountable for Their High Prices.

Employers and health insurance providers have worked hard to develop programs to hold drug companies accountable, to shed light on these pricing schemes, and keep costs low for North Dakotans. One such program allows patients to save money with a coupon but does not count the coupon's value toward patients' out-of-pocket cost obligations, known as accumulator programs. These programs help to restore the balance in the system by allowing the patient to use manufacturer coupons, but not counting the coupon towards the deductible – since the drug manufacturer is paying the amount of the coupon.

The Centers for Medicare and Medicaid Services (CMS) has explicitly allowed accumulator programs to continue in the Exchange Marketplaces as part of their efforts to combat the high and rising out-of-pocket costs for prescription drugs, recognizing the “market distortion effects related to direct drug manufacturer support amounts when consumers select a higher-cost brand name drug over an equally effective, medically appropriate generic drug¹⁰.”

The U.S. House Oversight Committee stressed in their investigation that these programs “do not provide sustainable support for patients and do not address the burden that the company's pricing practices have placed on the U.S. health care system.”¹¹

Legislation banning accumulator programs by requiring health plans to count all third-party payments towards an enrollee's cost sharing obligations will eliminate incentives for drug companies to lower prices. As a result, drug companies will make more money while North Dakota families and businesses continue to foot the bill through higher premiums, higher out-of-pocket expenses, and higher federal insurance subsidies.

The Legislature Should Focus on Solutions that Forbid Market Manipulation

Instead of taking away the few tools that health plans have to lower drug spending, we recommend that North Dakota legislators focus on fixing the market distortion caused by pricing schemes, including copay coupons.

AHIP supports a ban on copay coupons, especially in cases where less expensive generic alternatives are available, as California did in 2017.¹² This has been proposed as a major step by a group of prestigious health care scholars looking at ways offer evidence-based steps for reforming health care spending in the US.¹³

If you wish to allow the use of coupons to continue, we urge you to consider reforms that require fair and equitable distribution of coupons with sufficient oversight and transparency. This includes:

¹⁰ *Notice of Benefit and Payment Parameters for 2021*. Centers for Medicare & Medicaid Services. June 13, 2020. Available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-10045.pdf>.

¹¹ *Drug Pricing Investigation: Majority Staff Report*. US House Committee on Oversight and Reform. December 2021.

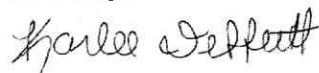
¹² <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WITH%20APPENDIX%20v3.pdf>. CA AB 265 (2017).

¹³ Dafny, et. al. *Eliminating Prescription Drug Copay Coupons. 1% Steps for Health Care Reform*. Available at <https://onepercentsteps.com/policy-briefs/eliminating-prescription-drug-copay-coupons/>

- Requiring promotions be provided to all patients prescribed the drug for the entire plan year and requiring manufacturers to inform patients to be informed when a promotion will be ended in a subsequent plan year.
- Requiring drugmakers to disclose the amount that they spend on these promotions and other patient assistance programs.
- Requiring patient assistance groups to annually report the contributions they receive from entities in the pharmaceutical supply chain.
- Requiring drugmakers providing a promotion, or other third-party program providing assistance, to notify an insurance provider when their enrollee is receiving these payments so that health insurance providers can better understand the impact of these payments.

AHIP stands ready to work together with policymakers on real solutions to ensure every patient has access to the high-quality drugs that they need and improve health care affordability. We appreciate the opportunity to share our concerns and your consideration of our comments.

Sincerely,



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AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.

Copay Coupons

A BRAND-NAME BAIT & SWITCH

Everyone should be able to get the medications they need at a cost they can afford. But drug prices are out of control, and hardworking families feel the consequences every day. Copay coupons¹ are just one more Big Pharma scheme to price gouge patients. Health insurance providers are fighting against Big Pharma's price gouging to make health care more affordable for every single American.

Copay coupons are a "bait & switch" game that increase the cost of care for everyone.

- These Big Pharma tactics incent patients to use very expensive drugs rather than equally effective, less expensive alternatives (such as generics, biosimilars, and other therapeutic substitutes).
- These promotions are offered only to very specific patients for a very short period of time. Once the patient hits their deductible – and will not see the drug's cost at the pharmacy counter – drugmakers stop providing their coupons. This scheme allows Big Pharma to keep their prices high, with patients, employees, and employers paying the cost.

Big Pharma could simply lower the prices of their prescription drugs. But they won't. Health insurance providers fight for patients and consumers to make health care and prescription drugs more affordable.

Studies prove that these promotions are used to increase sales, fueling increased drug spending.

- The House Oversight Committee's [investigation into drug pricing](#) found that Big Pharma uses patient assistance programs as a sales tool – focusing on their rates of return, encouraging patients to stay on branded drugs after a generic is introduced, and subsidizing third-party foundations to drive sales and attract patients who otherwise might not have used the high-priced drug.
- Drugs with coupons had a [higher annual price growth](#) (12-13%) than drugs without coupons (7-8%).
- Big Pharma [uses coupons to keep prices high](#), even after lower-cost generics come to market. After a generic alternative entered the market, [coupons increased spending on branded drugs by \\$30-\\$120 million per drug](#) over 5 years.
- Copay coupons [increase market share](#) and [increase sales](#) of brand name drugs after a generic enters the market.
- For one cancer treatment, one manufacturer projected a potential [rate of return of \\$8.90 for every \\$1 spent on their copay assistance program](#).

The U.S. House Oversight Committee stressed that these programs "do not provide sustainable support for patients and do not address the burden that the company's pricing practices have placed on the U.S. health care system."

¹ Here, the term "copay coupons" is used to represent all payments provided by a third party towards a patient's cost sharing (copay, coinsurance, deductible). This includes coupons directly from drug manufacturers, but also third-party payments and discount programs from patient assistance programs.

These bait & switch tactics are kickbacks to Big Pharma.

- The federal government considers copay coupons to be an illegal kickback. That's why they are not allowed to be used in federal health programs like Medicare or Medicaid.
- Health insurance providers are completely removed from this bait & switch process. They do not know when these promotions are used unless a pharmacist reports them.
- This type of system gaming is only seen from Big Pharma. Patients do not receive promotional discounts to encourage them to receive infusion chemotherapy at one hospital over another. If doctors and hospitals do not do this, why should Big Pharma be allowed to?

Letting drugmakers put money into patients' pockets to pay for their own expensive medicines "does induce people to get a specific product...it's kind of the definition of a kickback."

Policymakers can take steps to protect Americans from bait & switch gaming that threatens health care affordability.

- Ban these promotions and other third-party payments for brand-name drugs when patients can choose a less expensive alternative.
- Require a promotion to be provided to all patients prescribed the drug for the entire plan year. Require that drugmakers warn patients if they will end the promotion or third-party payment in a subsequent plan year.
- Require drugmakers providing a promotion, or other third-party program providing assistance, to notify an insurance provider when their enrollee is receiving these payments, including any associated terms and conditions.
- Require drugmakers to disclose the amount that they spend on these promotions and other patient assistance programs.
- Require patient assistance programs to annually report the contributions they receive from entities in the pharmaceutical supply chain.

Health insurance providers fight to protect Americans from the harmful effects of Big Pharma promotions.

- Health insurance providers are clear: Big Pharma should lower the prices that they (and they alone) set.
- Big Pharma's bait & switch games manipulate patients – and the market – for their own profits. That is why health insurance providers sometimes will allow patients to save money with a Big Pharma promotion, but do not count the promotion toward patients' out-of-pocket cost obligations.
- CMS agrees. CMS allowed health insurance providers to use such an approach in the individual market because of the "market distortion effects related to direct drug manufacturer support."

Lawmakers should not allow Big Pharma to play bait & switch games to manipulate the market, keep their prices high, and avoid transparency into the prices that they set. Let's work together on real solutions to improve health care affordability, access, and choice.